

**COURT OF APPEALS
DECISION
DATED AND FILED**

October 17, 2013

Diane M. Fremgen
Clerk of Court of Appeals

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

Appeal No. 2012AP969

Cir. Ct. No. 2012CV69

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

RACHEL ELSTON,

PETITIONER-RESPONDENT,

V.

TIMOTHY ZOELICK,

RESPONDENT-APPELLANT.

APPEAL from an order of the circuit court for Jefferson County:
JENNIFER L. WESTON, Judge. *Affirmed.*

Before Lundsten, Higginbotham and Kloppenburg, JJ.

¶1 PER CURIAM. Timothy Zoellick appeals a harassment injunction order. He argues that his conduct did not constitute harassment, specifically contending that the circuit court improperly inferred an illegitimate motive from

his “mere presence in a public place.” He also argues that the injunction is overly broad. We reject Zoellick’s arguments, and affirm.

¶2 In 2011, Zoellick was a regular customer at a Pizza Hut restaurant in Watertown, where Rachel Elston was employed as a waitress. When Elston took a job at a new restaurant called “On The Rock,” she invited various Pizza Hut patrons to “come check out the new restaurant.” Zoellick then patronized the new restaurant on a consistent basis.

¶3 Zoellick began to position himself at the restaurant so as to observe Elston and interact with her. Elston made efforts to avoid him during her work shift, but Zoellick began frequenting the restaurant nearly every day Elston worked and inquired when she was not his server.

¶4 Zoellick appeared at a Halloween party at a bar in 2011 that Elston attended. He tried to get her attention for fifteen to twenty minutes, but she made a conscious effort to avoid him, eventually leaving the party with her mother. At some point shortly thereafter, Elston’s roommate told her that Zoellick was the uncle of an individual Elston had “turned in” for committing a homicide. During this same time frame, Elston moved in with her mother.

¶5 On November 9, 2011, Elston asked a co-worker to wait on Zoellick’s table. When Elston left the restaurant after her shift, she did not feel comfortable leaving alone and was escorted to her car. When Elston left work on November 11, she could hear Zoellick walking behind her. Elston ran to her car and locked the doors. When she turned around, Zoellick was gone.

¶6 On November 15, after leaving work, Elston pulled her vehicle in front of her mother’s residence and sat in her vehicle for several minutes. She

then looked up and saw Zoellick driving past. When she looked in her rearview mirror, she observed Zoellick turn around in the street, pull up behind her, get out of his vehicle, and come up to her window. She rolled down the window slightly, and Zoellick stated that he saw her at the restaurant being walked to her car. Zoellick also asked her if her ex-boyfriend was harassing her. Elston advised him that she was still with her boyfriend and they were trying to work things out. Zoellick got an angry look on his face and stuttered, "I thought you broke up with him." Elston told Zoellick that she had been with her boyfriend for seven years. Zoellick asked how old she was when she first started dating him. Zoellick also asked, "How come I never get you as a server?" He further inquired why she was not working on Mondays anymore.

¶7 The following day, November 16, Zoellick came into the restaurant and sat at a table very close to the server station. When another server waited on him, Zoellick asked whether Elston was working that night and requested that Elston be his server. When informed that Elston was busy and would not be his server, Zoellick became upset. When Elston walked past him to serve another table, Zoellick asked her why they had changed her schedule. He then stated that he knew she had school on Tuesday and Thursday.

¶8 At 8:30 p.m., Zoellick was the only customer remaining. The other server was in the kitchen when Zoellick approached Elston at the server station and said he was sorry if he had startled her the previous day. Elston responded that she was afraid, and it was not normal for a customer to pull up behind someone in that manner and ask personal questions.

¶9 On November 19, Elston observed Zoellick pull into the restaurant at 8:30 p.m. Elston quickly left and went to her car. She stopped by Zoellick's

vehicle to get his license plate number, and called her mother to inform her of the plate number and color of the vehicle. Elston proceeded to her mother's residence and subsequently observed Zoellick's vehicle driving down the street toward the house. Elston and her mother later observed Zoellick turn around and park with his running lights on. When Elston and her mother subsequently drove away from the residence, Zoellick followed them with his lights off. Elston proceeded to the police station and filed a report. A "stay-out" letter concerning On The Rock was served on Zoellick on November 20. A restraining order was obtained against Zoellick and served on November 25.¹

¶10 On December 2, 2011, when Elston left work, she observed Zoellick drive past the restaurant. She drove home, ran upstairs, and saw Zoellick drive up and down the block. Elston again observed Zoellick drive past the restaurant on December 3. On December 8, Elston filed another police report.

¶11 On December 12, 2011, Zoellick was arrested and charged with violating a restraining order, stalking, and disorderly conduct. He was released on bond, with conditions, including: (1) no contact with Elston; and (2) no presence within 100 feet of Elston's mother's residence or the restaurant except between 6:00-7:00 a.m. and 2:00-3:00 p.m. for purposes of driving to work for employment.

¶12 At approximately 9:30 p.m. that same day, Zoellick violated his bond by appearing across the street from Elston's mother's home. Zoellick was arrested for a violation of the bond condition and appeared in court on

¹ This restraining order was apparently dismissed by stipulation without the entry of a permanent injunction.

December 14, but was again released on bond. More detailed bond conditions were drafted concerning where Zoellick could and could not be in Watertown to ensure no further issues regarding harassment of Elston.

¶13 On December 31, 2011, Elston returned from Madison with a friend and parked her vehicle across the street from her friend's home. She looked behind and saw Zoellick's vehicle at the stop sign. Elston's friend walked into her house, and Elston turned the vehicle around. When she passed the parking lot next to her friend's residence, Zoellick was in the parking lot. Elston went to get her nails done and parked on Main Street. She observed Zoellick walk by the salon, look directly at her through the window, and smile. Elston called the police, and then noticed Zoellick across the street again walking past, staring inside the salon.

¶14 On January 2, 2012, Elston was working at a new job at a Shell station in nearby Johnson Creek when Zoellick entered. On January 23, Elston observed Zoellick repeatedly drive by the Shell station. As she left work and headed back to Watertown, Zoellick followed her in his vehicle.

¶15 On January 26, 2012, the present challenged restraining order was issued against Zoellick. On February 2, while working at a tanning salon, Elston observed Zoellick slowly drive by the business no less than six times within a thirty- to forty-minute period. On February 7, Elston again observed Zoellick driving through the parking lot of the tanning salon.

¶16 On February 9, 2012, an injunction hearing was held. The circuit court granted the restraining order, concluding: "I am very, very satisfied that [the evidence] sustains a burden of proof necessary to obtain a harassment restraining order against Mr. Zoellick." The court emphasized that Zoellick "seems to want to walk the gray line, and I want to stop that." The court stated: "I am also going

to create some pretty serious geographical restrictions on Mr. Zoellick that will enable him to continue to reside in his home ... and continue to maintain his employment.” Zoellick now appeals.

¶17 A court may grant an injunction ordering a person to cease or avoid the harassment of another if it finds reasonable grounds to believe that the person has engaged in harassment with intent to harass or intimidate the other. *See* WIS. STAT. § 813.125(4)(a)3.² “Harassment” is defined under § 813.125(1)(b) as “[e]ngaging in a course of conduct or repeatedly committing acts which harass or intimidate another person and which serve no legitimate purpose.”

¶18 Zoellick argues that the circuit court improperly inferred the absence of any legitimate purpose from Zoellick’s “mere presence in a public place.” He also contends that the injunction should be invalidated as overbroad. We are not persuaded.

¶19 Whether Zoellick was merely present in a public place, rather than attempting to be near Elston, is a question of fact. Clearly, the circuit court resolved this factual issue in favor of a finding that Zoellick intentionally put himself in public places to stalk Elston. The court’s factual findings are not clearly erroneous. *See* WIS. STAT. § 805.17(2). Indeed, on this record, there can be no serious doubt that Zoellick repeatedly stalked Elston, including on February 2 and 7.

² All references to the Wisconsin Statutes are to the 2011-12 version unless otherwise noted.

¶20 We also conclude that the scope of the injunction does not unnecessarily impinge upon Zoellick's constitutional rights. Our review of the scope of an injunction is limited, for this is a matter within the "sound discretion of the trial court." See *Welytok v. Ziolkowski*, 2008 WI App 67, ¶24, 312 Wis. 2d 435, 752 N.W.2d 359. We search for reasons to affirm a circuit court's discretionary decision. *Id.* Furthermore, geographic limitations are not a per se violation of constitutional rights. See *Predick v. O'Connor*, 2003 WI App 46, ¶18, 260 Wis. 2d 323, 660 N.W.2d 1, *review denied*, 2003 WI 32, 260 Wis. 2d 753, 661 N.W.2d 101, *cert. denied*, 540 U.S. 1047 (2003). Each case must be analyzed on its own facts, circumstances, and total atmosphere to determine whether the geographic restriction is narrowly drawn. *Id.*

¶21 In this case, the reasonableness of the court's geographic restriction is supported by the fact that Zoellick repeatedly harassed Elston in numerous public places, and the use of an automobile furthered his reach. In order to protect Elston from what the court found was Zoellick's persistent harassment, the court reasonably created a zone of protection. Contrary to Zoellick's perception, the court tailored the injunction to allow Zoellick to live in his home, go to work, and otherwise go about his life. At the same time, the price Zoellick has had to pay for his repeated harassing behavior is that large chunks of his home town and a nearby town are now off-limits.

¶22 In this regard, we also note that Zoellick repeatedly demonstrated that standard, more narrowly tailored orders would not deter him. As already noted, this matter began with harassing behavior that led to injunctions, one of which was followed the very same day by Zoellick attempting to get near Elston. The court crafted progressive restrictions in an effort to enjoin Zoellick's conduct, but they proved insufficient. Finally, it reached the point where the same judge

who heard this matter throughout determined that, in order to create a safe zone for Elston, it was necessary to block out significant geographic areas.

¶23 As the circuit court emphasized, Zoellick “seems to want to walk the gray line.” The geographic restriction imposed by the court struck a balance that sought to rehabilitate Zoellick, and to provide his victim with a margin of territorial safety in which she can attempt to live in peace. On this record, we conclude that the court properly exercised its discretion.

By the Court.—Order affirmed.

This opinion will not be published. See WIS. STAT. RULE 809.23(1)(b)5.

